

Message Text

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ACTION EA-10

INFO OCT-01 ISO-00 L-03 CIAE-00 COME-00 EB-07 INR-07

LAB-04 NSAE-00 SIL-01 PM-03 /036 W

----- 065215

R 260336Z MAY 75

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 3796

INFO SECDEF

DEPT OF NAVY

CSAF

CINCPAC

CINCPACREPPHIL

CDR 13TH AF

C O N F I D E N T I A L MANILA 7170

E.O. 11652: GDS

TAGS: MARR ELAB RP

SUBJ: EMBASSY RECOMMENDS USG ENGAGE IN EXCHANGE OF NOTES WITH
GOP TO AMEND 1968 BASES LABOR AGREEMENT TO ACCOMMODATE NEW PHIL
LABOR CODE WHICH CALLS FOR COMPULSORY CHECK-OFF OF UNION
DUES

1. THE DECREE OF THE LABOR CODE OF THE PHILIPPINES BY PRES.
MARCOS IN NOVEMBER, 1974 ENCOURAGED THE UNION SHOP AND COMPUL-
SORY CHECK-OFF OF UNION DUES IN THE PHILIPPINES. THE DECRE
WAS NATURALLY OF IMMEDIATE INTEREST TO THE FEDERATION OF
FILIPINO CIVILIAN EMPLOYEES IN U.S. BASES WHICH
HAS FACED FOR SOME TIME A PROBLEM OF FREELOADING NON-UNIONISTS
WHO ENJOY THE BENEFITS GAINED BY THE FEDERATION BUT DO NOT PAY
DUES. THIS ASPECT OF THE DECREE WAS OF SPECIAL INTEREST,
MOREOVER, TO FEDERATION PRESIDENT SR. RUEBEN DE OCAMPO,
A SUBIC EMPLOYEE, WHO IS FACING THREATS TO HIS LEADER-
SHIP AT SUBIC FROM MINORITY FACTIONS. THE DECREE IS
DESIGNED TO HAVE THE EFFECT OF ELIMINATING SUCH MINORITY
THREATS TO ESTABLISHED UNIONS. INSPIRED BY THE DECREE,
THE FEDERATION SENT A LETTER IN FEB 1975 TO CINC-
PACREPPHIL ALLEGING THAT SINCE THE DECREE HAD COME INTO
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EFFECT IN NOV, THE BASES SHOULD HAVE BEEN DEDUCT-

ING UNION DUES FROM ALL EMPLOYEES SINCE THAT TIME.

2. THIS LETTER WAS THE SUBSEQUENT SUBJECT OF DISCUSSION BETWEEN THE UNDERSECRETARY OF LABOR AND THE POLITICAL-MILITARY OFFICER AT WHICH TIME THE PHILIPPINE OFFICIAL WAS INFORMED THAT THE EMBASSY WOULD STUDY THE QUESTION BUT THAT COMPULSORY CHECK-OFF APPEARED TO BE INCONSISTENT WITH PROVISIONS OF THE 1968 US-RP BASES LABOR AGREEMENT WHICH CALLED FOR VOLUNTARY CHECK-OFF. IN ANY CASE, IT WAS SUGGESTED THAT THIS MATTER, INVOLVING AS IT DID THE QUESTION OF LABOR STANDARDS, WAS PROPERLY AN ITEM FOR NEGOTIATION BETWEEN THE FEDERATION AND THE BASES IN THE FORTHCOMING NEGOTIATIONS FOR A NEW COLLECTIVE BARGAINING AGREEMENT.

3. MEANWHILE, THE EMBASSY HAS BEEN STUDYING THE BLA. THIS STUDY MAKES IT CLEAR THAT THE BLA CREATED A SPECIAL LABOR REGIME, DIFFERENT FROM EITHER THAT OF THE REGIMES CREATED BY USG OR GOP DOMESTIC LAW. THIS REGIME IS OBVIOUSLY APPLICABLE ONLY TO US ARMED FORCES EMPLOYMENT OF FILIPINO DIRECT HIRE EMPLOYEES. THE REGIME SPECIFICALLY EXCLUDES CONTRACTORS AND CONCESSIONARIES PERFORMING WORK FOR THE US ARMED FORCES WHO ARE REQUIRED TO COMPLY WITH PHILIPPINE LAW AND REGULATIONS.

4. IN ORDER TO MAKE THIS SPECIAL REGIME CREATED BY INTERNATIONAL AGREEMENT CONSISTENT WITH BOTH US AND RP LABOR LAW REQUIREMENTS, THE CONTRACTING PARTIES AGREED IN ARTICLE I (2) AS FOLLOWS:

"2." UNIFORM STANDARDS. TO THE EXTENT CONSISTENT WITH THE PROVISIONS OF THIS AGREEMENT AND THE NATIONAL LAWS OF EITHER COUNTRY AND REGULATIONS PURSUANT THERETO AND IN CONFORMITY THEREWITH, TERMS AND STANDARDS OF EMPLOYMENT, INCLUDING WAGES, WORKING CONDITIONS AND BENEFITS SHALL BE SUBJECT TO COLLECTIVE BARGAINING AND, UNDER UNIFORM PERSONNEL POLICIES AND ADMINISTRATION, SHALL APPLY EQUALLY TO ALL EMPLOYEES, REGARDLESS OF NATIONALITY AND SOURCES OF FUNDS USED."

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5. THE POINT OF ARTICLE I (2) IS THAT THE TERMS AND CONDITIONS INCORPORATED INTO A COLLECTIVE BARGAINING AGREEMENT SHOULD BE CONSISTENT WITH THE NATIONAL LABOR LAWS OF EITHER COUNTRY AS WELL AS WITH THE BLA. THE APPLICABLE NATIONAL LAWS ON COMPULSORY CHECK-OFF ARE AS FOLLOWS:

1) PHILIPPINES: NON-VOLUNTARY CHECK-OFF IS AUTHORIZED

UNDER THE NEW LABOR CODE (ARTICLE 247 (E) AND SECTION 13, RULE XV, BOOK V, OF IMPLEMENTING RULES AND REGULATIONS.

2) UNITED STATES: THE TAFT-HARTLEY ACT LEAVES TO INDIVIDUAL STATES THE AUTHORITY TO DETERMINE SUCH MATTERS. ABOUT ONE-THIRD OF THE STATES HAVE REJECTED NON-VOLUNTARY CHECK-OFF UNDER RIGHT-TO-WORK LAWS. OTHER STATES ALLOW NON-VOLUNTARY CHECK-OFF. BOTH U.S. AND PHILIPPINE LAWS GENERALLY, THEREFORE, AUTHORIZE OR AT LEAST DO NOT PROHIBIT NON-VOLUNTARY CHECK-OFF.

6. NEVERTHELESS, IN ARTICLE II (2) OF THE BLA, THE FOLLOWING SENTENCE IS FOUND: "THE U.S. ARMED FORCES WILL MAKE PROVISION FOR VOLUNTARY CHECK-OFF OF LABOR ORGANIZATION DUES." CLEARLY, THEREFORE, THE BLA WOULD APPEAR TO PROHIBIT NON-VOLUNTARY CHECK-OFF OF UNION DUES.

7. THE GOP DEPT OF LABOR AND THE FEDERATION ARGUE THAT ARTICLE II (2) MERELY REFLECTS THE PREVAILING PRACTICE AT THE TIME THE BLA WAS NEGOTIATED AND ARTICLE II (2) SHOULD NOT BE CONSTRUED TO MEAN THAT VOLUNTARY CHECK-OFF OF LABOR ORGANIZATION DUES WAS THE ONLY MANNER IN WHICH SUCH DUES COULD BE COLLECTED. THEY ARGUE THAT SINCE THE LABOR CODE HAS CHANGED PREVAILING PRACTICE FROM VOLUNTARY TO NON-VOLUNTARY CHECK-OFF OF UNION DUES IN THE PHILIPPINES, AND SINCE THE US HAS ALREADY AGREED IN THE BLA TO THE PRINCIPLE OF COLLECTING UNION DUES, ALL THAT IS NECESSARY IS THAT THE US BASES IN THE PHILIPPINES NOW ADJUST THEIR COMPUTERS AND COLLECT DUES FROM ALL EMPLOYEES COVERED BY THE BLA. THE DEPT OF LABOR ARGUES THAT THIS WOULD BE A CHANGE OF MODE RATHER THAN A VIOLATION OF PRINCIPLE.

8. IN ANY CASE, ON MAY 21 THE UNDERSECRETARY OF LABOR
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TOLD THE POL/MIL OFFICER THAT IT WAS ALL QUITE SIMPLE. IF THE BASES DID NOT AGREE TO THE IDEA OF NON-VOLUNTARY CHECK-OFF, THE GOP WOULD ITSELF COLLECT THE DUES. THE MANNER OF SUCH COLLECTION WAS NOT SPECIFIED.

9. IT IS NOT CLEAR HOW THE GOP WOULD ATTEMPT SUCH A COLLECTION, BUT ANY UNILATERAL ATTEMPT WOULD BE DIS-ORDERLY TO SAY THE LEAST. IN ANY EVENT, THE EMBASSY AND THE BASES PERCEIVE NO ISSUE OF PRINCIPLE OR POLICY OVER THE MODE OF CHECK-OFF SINCE THE PROPOSED NON-VOLUNTARY METHOD IS ALSO CONTEMPLATED UNDER U.S. LAW. WE BELIEVE THE BLA SHOULD BE CHANGED THEREFORE TO MAKE IT CONSISTENT WITH THE NEW LABOR CODE. THIS CAN BE DONE BY AMENDING ARTICLE II (2) BY THE DELETION OF THE WORD "VOLUNTARY" IN TH

SECOND SENTENCE WHICH WOULD HAVE THE EFFECT OF LEAVING THE BLA SILENT ON THE ISSUE OF VOLUNTARY OR NON-VOLUNTARY UNION DUES COLLECTION. SUCH AMENDMENT WOULD THUS MAKE THE BLA ACCORD WITH THE THRUST OF BOTH U.S. AND RP LABOR LAWS ON THE CHECK-OFF ISSUE AND ELIMINATE THIS CONFLICT.

10. THIS ACTION WOULD BE PRELIMINARY TO SPECIFYING THE MODE OF CHECK-OFF IN THE COLLECTIVE BARGAINING AGREEMENT ON WHICH NEGOTIATIONS WILL BEGIN IN JUNE.

11. RECOMMENDATION: THAT THE EMBASSY BE GIVEN IMMEDIATE AUTHORIZATION TO AMEND THE 1968 US-RP BASES LABOR AGREEMENT (TIAS 6542) BY DELETING THE WORD "VOLUNTARY" FROM THE SECOND SENTENCE OF ARTICLE II (2).

12. THIS MESSAGE HAS BEEN DISCUSSED WITH THE CINCPACREP-PHIL LABOR ADVISOR, WHO WILL COMMENT IN A SEPARATE MESSAGE ON THE CHECK-OFF ISSUE.

SULLIVAN

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LABOR RELATIONS, MILITARY BASES, LABOR AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 26 MAY 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975MANILA07170
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750184-0232
From: MANILA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750518/aaaaapuu.tel
Line Count: 189
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 23 JUL 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23 JUL 2003 by BoyleJA>; APPROVED <24 JUL 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EMBASSY RECOMMENDS USG ENGAGE IN EXCHANGE OF NOTES WITH GOP TO AMEND 1968 BASES LABOR AGREEMENT TO ACCOMMODATE NEW PHIL
TAGS: MARR, ELAB, RP
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006